

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROBERT HILLER, Individually, on
behalf of his minor child, and as
Personal Representative of the Estate
of Carolyn B. Hiller, deceased,

Plaintiff,

v.

Civ. No. 02-1231 LH/RLP

CHRISTOPHER R. FLETCHER, M.D.,

Defendant.

MEMORANDUM OPINION AND ORDER

The matters before the court are a discovery dispute and a motion for sanctions. Defendant served Plaintiff with a request for admissions, requesting that Plaintiff admit the authenticity of medical records obtained from the U.C.L.A. Medical Center. Plaintiff denied the request, raising the objection that the records contained notations with which he was unfamiliar. This was a valid objection.

Defendant then obtained a second set of “clean” records and again requested an admission of authenticity. Plaintiff again refused; this time on the ground that the only person who could authenticate the records was the medical records custodian at U.C.L.A. This refusal necessitated a deposition of said custodian. The current Motion to Compel requests the court to order Plaintiff to admit the authenticity, presumably so that Defendant will not have to incur the costs of having the record custodian testify at trial. Defendant notes that Plaintiff is in possession of the UCLA medical records because he provided them to the Medical Review Commission and to his expert.

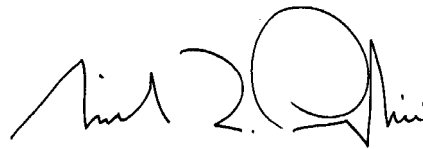
The court is unable to discern any substantive reason advanced by Plaintiff for his failure to stipulate as to the records' authenticity. The court is also unable to discern whether the records custodian at UCLA authenticated the medical records submitted. If the records were authenticated by the records custodian the court orders Plaintiff to admit the documents' authenticity for admission at trial in the absence of any other objection which would deem them inadmissible. This admission shall be served on Defendant within ten (10) days of entry of this Order. No costs or fees are awarded.

Plaintiff's Motion for Sanctions is denied.

IT IS THEREFORE ORDERED that Defendant's Motion to Compel Pursuant to Fed.R.Civ.P. 379a) and Local Rules LR 26.6 and LR37.1 [Doc. 63] is granted as stated herein;

IT IS FURTHER ORDERED that Plaintiff's Motion for Sanctions [Doc. 66] is denied.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', is written above a horizontal line.

Richard L. Puglisi
United States Magistrate Judge

For the Plaintiff: Greg Kauffman, Esq.

For the Defendant: Joe L. McClaugherty, Esq.